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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,958	01/17/2002	Ake Lignell	REF/LIGNELL/551	6995
7590	09/08/2004		EXAMINER	
Bacon & Thomas Fourth floor 625 Slater Lane Alexandria, VA 22314-1176			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/463,958		LIGNELL, AKE	
	<b>Examiner</b>		<b>Art Unit</b>	
	Susan D. Coe		1654	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 04 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-10 and 16 is/are allowed.
- 6) ☒ Claim(s) 11-15 and 17-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The response filed June 4, 2004, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 8-25 are currently pending.

### ***Claim Objections***

3. Claims 11-15 and 21-24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. These claims do not properly further limit the independent claims, claims 1 and 17. Both claim 1 and claim 17 specify a composition that "consists essentially of" xanthophylls. "Consisting essentially of" is considered partially closed claim language that does not allow for the addition of any other active ingredients. However, claims 12-15 and 21-24 add additional active ingredients to the composition such as algal meal, carbohydrates and antioxidants. Thus, by adding additional ingredient these claims do not properly depend from a claim directed to using a composition that is "consisting essentially of" one ingredient.

### ***Claim Rejections - 35 USC § 112***

4. Claims 11-15 and 21-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are indefinite because they do not properly depend from the independent claims, claims 1 and 17. Both claim 1 and claim 17 specify a composition that “consists essentially of” xanthophylls. “Consisting essentially of” is considered partially closed claim language that does not allow for the addition of any other active ingredients. However, claims 12-15 and 21-24 add additional active ingredients to the composition. Thus, these claims do not properly depend from the parent claims which consist essentially only of xanthophylls. This conflict in scope is confusing and indefinite.

***Claim Rejections - 35 USC § 102***

5. Claims 17-25 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/37874.

WO ‘874 teaches administering astaxanthin to a patient. WO ‘874 teaches using astaxanthin esterified with fatty acids isolated from *Haemactococcus* sp. The astaxanthin is administered with carbohydrates and antioxidants (see page 3). The astaxanthin is administered in 0.01 to 10 mg per kg body weight (see page 4, lines 13-16 ).

WO ‘874 does not specifically teach that the composition functions as a prophylaxis against indigestion. However, indigestion is an ailment that every person can develop. Thus, the patient treated in WO ‘874 and the claimed patient are the same because every potential patient can potentially develop indigestion. Since WO ‘874 is administering the same composition as claimed to the same patient as claimed, the method taught by WO ‘874 must inherently contain the same prophylaxis against indigestion as claimed.

6. Claims 8-10 and 16 are allowable. Claims 11-15 and 17-25 are rejected.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

A handwritten signature in cursive script, appearing to read "Susan D. Coe".

Susan D. Coe, Examiner

August 26, 2004